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THE
TRIAL AT LARGE
OF
THOMAS PAINE, *K*
FOR A LIBEL,
IN
THE SECOND PART
OF
RIGHTS OF MAN.

BEFORE
LORD KENYON
AND A
SPECIAL JURY,
IN THE
COURT OF KING'S BENCH, GUILDHALL, Dec. 18, 1792.

BY A STUDENT OF THE INNER TEMPLE.

LONDON:
PRINTED FOR JAMES RIDGWAY, YORK-STREET,
ST. JAMES'S SQUARE.

[Price 6d. or 100 Copies for 30s.]

KING AGAINST PAINE.

JURORS.

<i>John Campbell, Merchant, Foreman.</i>	
<i>John Lightfoot,</i>	<i>Richard Tugwell,</i>
<i>Chris. Faddy,</i>	<i>John Porter,</i>
<i>Robert Oliphant,</i>	<i>Thomas Druce,</i>
<i>Cornelius Donovan,</i>	<i>Isaac Railton,</i>
<i>Robert Rolleston,</i>	<i>Henry Evans, Merchants.</i>
<i>John Lubbock,</i>	

COUNSEL for MR. PAINE.

<i>Mr. Erskine,</i>	<i>Mr. Vaughan.</i>
<i>Mr. Pigott</i>	<i>Mr. Fitzgerald,</i>



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LONDON
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ST. JAMES'S SQUARE

MR. PERCIVAL opened the pleadings on the part of the Crown. He said, this was an information against Thomas Paine, for that he being a person of a wicked, malicious, and seditious disposition; and wishing to introduce disorder and confusion, and to cause it to be believed, that the Crown of this kingdom was contrary to the Rights of the Inhabitants of this kingdom; and to cause it to be believed also, that the Bill of Rights was a Bill of Wrongs and Insults; all tending to bring the government of this country into contempt, and endeavouring to cause it to be believed, that the Parliament of this country was openly corrupt in the face of day; and in order to withdraw the affection of the people of this kingdom, against the Law and Constitution of this country; that he, Thomas Paine, wishing and intending this mischief, did, on the 16th of February, 1791, wickedly, falsely, maliciously, scandalously, and seditiously publish a certain book, called Second Part of the Rights of Man, signed Thomas Paine, containing many false, wicked, scandalous, malicious, and seditious assertions; with which he should not trouble the Jury, as they would have them from the Attorney General. The Defendant had pleaded Not Guilty, upon which issue was joined.

The Attorney General said, the Jury would permit him to state, in this stage of the proceeding, that in his mind a cause, which brought its own merit with it, a cause more plain, more clear, more certain, and indisputable, never came before a Court. Was it not that certain circumstances had happened, and contributed to make the book in question an object of considerable magnitude, and rendered it important, he should at once propose reading the pages of the book, as they were included in the information, to the Jury, and then have left the case to be disposed by their good sense; but the particular mischief that naturally flowed from this wicked publication, had rendered it necessary for him to open the case in a fuller way than usual upon such occasions. To speak of himself was what he had no delight in, and what could not be entertaining to the Jury; but as circumstances made it necessary, he hoped the Jury would forgive it. A rumour had been spread, that this prosecution did not correspond with his private judgment. To this he answered, that if he did not think this a fit object for prosecution, he should think such an opinion disqualified him from holding the office he now filled, he would be degraded in the estimation of every professional man, and he ought to be despised if he felt any unwillingness to bring this enormous case before a Jury of this Country.

This was not the first of the kind which this defendant had thought fit to publish against Government. He was not, perhaps, warranted in not bringing the first before the Gentlemen of the Jury. He passed it by, however, as it was ushered into the world in that shape, that it was likely to fall only into the hands of tolerably informed persons, who would have the sense to see the poison, and consequently would be able to apply the antidote, and refute it as they went along; but when another appeared in a smaller size, printed on white-brown pa-

per, and thrust into the hands of all persons, of all ages, sexes, and conditions: they were even wrapped up with sweetmeats for children. Such were the steps that had been taken to forward the publication, and he did what his duty demanded of him, he filed an information against the defendant the first day of the succeeding term, putting the question upon record, which they, the Jury, had to try.

What it was that was the intention of this man by these publications, would not be matter of difficulty for the Jury to discover; it was manifested by every test that could apply to the explanation of a man's intention, and the Jury would have to say, whether they were not satisfied that the whole of the book in question did not deserve the blame which had been imputed to it by the information. It was written with a view to vilify, degrade, and to bring into abhorrence and contempt all the establishments of this country in all the departments of the state. The whole of the book, the Jury would see, was artfully written for the purpose for which it was intended, namely, to make the lower orders of Society disaffected to Government, and it was the most gross artifice that ever imposed upon the credulous part of mankind. It was all written in the dogmatical manner. It consisted of so many ready made propositions, without regard to truth, and without the least application to circumstances, and also without the least reasoning or deduction whatever; addressed to men who were very properly anxious about their rights, but who, from too little knowledge of our Constitution, and from being too little habituated to reflection, were easily imposed upon by shallow artifice; and when these honest, but deluded men, came to be persuaded, that they were deprived by the despotic temper of Government of Rights, to which they were certainly intitled, it was a matter of no wonder they should manifest an abhorrence at the whole fabric. He desired any man to shew a system capable of creating more mischief than this book. It stated that the regular system of our legislation was inherently corrupt, and that the whole formed a mass of abominable tyranny. Secondly, that the Legislature altogether was, without a single exception, grounded upon usurpation; that this usurped authority framed what was called law, but that in reality there was scarcely such a thing as law in the country. Thus ten or twelve millions of people were told they were governed by usurpation; and that of course, as there was no such thing as law, each individual would be left to govern all his actions by his own partial notions of moral duty. Were we indeed to follow these doctrines? Were we to fall into a lawless banditti? Were we to be reduced back again into a savage state of nature, where man was the enemy of man, where all his faculties were useless, except strength and cunning? Were we to return to this state? The Jury knew what the answer was to these questions. What was to be said to a man who would thus, with a general sweep take away all law, or the force of all law, by asserting that all laws which had been hitherto made, are null and void; this sort of artifice was very gross, it was true, but it did not appear so to those who could not detect the artifice. Objections too were stated in this book to *Monarchy*, in general terms, without one word being said of its *advantages*. The power of the *Arif-*

ocracy was objected to, but not a word was said about the *Democratic* part of our Constitution. It was well known that England had a powerful Democracy, but not a word of that, because it would not make the lower classes of the people discontented; this was the common artifice; an artifice so very shallow, that some people might wonder perhaps at the success of it; but to whom were these things addressed? To the ignorant, the credulous, and the desperate—the latter were naturally the enemies of all government, order, or regularity; every restraint was irksome to them, and nothing was so plausible or convincing to them, even upon the point of propriety, as to inform them we shall have no government at all; the others were easily to be imposed upon, and made the dupes of the crafty and designing, who might chuse to deceive them.

The Jury, in order to judge accurately of the merits of this political performance, would take into their consideration the phrases and manner in which the author was pleased to express his thoughts in this publication; the manner was insinuating and contemptuous, and, as to the matter, he called it an utter defiance to all law, morality, and religion. The indecency with which Monarchy was treated was quite shocking, and the conclusions in that work upon that topic, discovered that the author was destitute of knowledge, as to the various provisions, and wise ones too, which the law made in that particular. Here the learned Gentleman entered into an historical detail of the various permanent Council for Minor Kings, Regents, Hereditary and official advisers, &c. of the throne, in various cases of necessity; so that the provisions by law were such, that no material inconvenience could be sustained by the public on account of the Monarchical system—a system which Mr. Paine had been pleased to say was such, that a case might occur where there would be a complete chasm in that branch of our form of Government. The truth was, that our Constitution was the best upon earth, and that for the plainest and clearest reason—it had had longer time for melioration than that of any other in the world. Seven hundred years ago freedom was its basis. From the days of Julius Cæsar it had, from age to age, been improved, until it was completed at the Revolution.

He apprehended it to be no difficult operation of the human mind, to distinguish reasoning from a deliberate design to withdraw men's minds from the Constitution; it was done by the operation of good sense, and not difficult for a Jury of the City of London. They would observe, whether the whole of the book was not calculated to convince the sober part of mankind, or to produce disaffection; to inflame passions, instead of reasoning with the mind. He knew of no circumstance that could leave a doubt in the mind of the Jury, as to what was passing in the heart of the Defendant, at the time he penned this publication.

He had thought it more becoming, as well as beneficial to the Public, to select out of this wicked work six or seven passages, than to encumber the record with too many recitals. He would now take them in their order:

The first passage is to be found in page 21, large edition, and is in
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these words : " All Hereditary Government is in its nature tyranny. An heritable crown, or an heritable throne, or by what other fanciful name such things may be employed, have no other significant explanation than that mankind are heritable property. To inherit a Government, is to inherit the people, as if they were flocks and herds."

Now what was the tendency of this ? To destroy all subordination and submission to the law. It was neither more nor less than this ;—to hold out to the people of this country, that they were slaves ; this was one of these short ready-made propositions, which if a man believes, he must say, I can bear this no longer. As to the King's inheriting the People, this was a piece of sophistry, he had no inheritance in the people ; his inheritance was his office, and that was an office under the law.

The next passage is in page 47. " This Convention met at Philadelphia, in May, 1787, of which General Washington was elected President. He was not at that time connected with any of the State Governments, or with Congress. He delivered up his commission when the war ended, and since then had lived a private Citizen.

" The Convention went deeply into all subjects ; and having, after a violent debate and investigation, agreed among themselves upon the several parts of a federal Constitution ; the next question was, the manner of giving it authority and practice.

" For this purpose they did not, like a cabal of Courtiers, send for a Dutch Stadtholder or a German Elector, but they referred the whole matter to the sense and interest of the Country."

What was this ? Why the whole was written for the sake of introducing a sneer against a Dutch Stadtholder and German Elector, this discovered the temper of the man ; but it was another dogma or ready made proposition, without the least deduction.

Page 52. " The history of the Edwards and the Henries, and up to the commencement of the Stuarts, exhibits as many instances of tyranny as could be acted within the limits to which the nation had restricted it. The Stuarts endeavoured to pass those limits, and their fate is well known. In all those instances, we see nothing of a constitution, but only of restrictions on assumed power.

" After this, another William descended from the same stock, and claiming from the same origin, gained possession ; and of the two evils, James and William, the nation preferred what it thought the least ; since, from circumstances, it must take one. The act, called the Bill of Rights, comes here into view. What is it but a bargain, which the parts of the government made with each other to divide powers, profits, and privileges ? You shall have so much, and I will have the rest ; and with respect to the nation, it is said, for *your share you shall have the right of petitioning*. This being the case, the bill of rights is more properly a bill of wrongs and of insult. As to what is called the Convention Parliament, it was a thing that made itself, and then made the authority by which it acted. A few persons got together, and called themselves by that name. Several of them had never been elected, and none of them for the purpose.

" From the time of William, a species of Government arose, issuing out

out of this coalition bill of rights; and more so, since the corruption introduced at the Hanover succession, by the agency of Walpole; that can be described by no other name than a despotic legislation. Though the parts may embarrass each other, the whole has no bounds; and the only right it acknowledges out of itself, is the right of petitioning. Where then is the Constitution, either that gives or that restrained power?

"It is not because a part of the government is elective, that makes it less a despotism, if the persons so elected possess afterwards, as a Parliament, unlimited powers. Election, in this case, becomes separated from representation, and the candidates are candidates for despotism."

Thus this author would have us believe, that, from the days of the Edwards and the Henries, up to the Stuarts, we had nothing but tyranny; and the Bill of Rights, it seemed, was a bill of wrongs and insults. Who was so infatuated as to believe all this? Who among us was ignorant of the character of that great founder of our jurisprudence, Edward the Third. And as to the Bill of Rights, strangely must that heart be constituted, which had not a grateful reverence for the memory of those who procured it. But as eulogium would be lost on that bill, let it speak for itself. Here he recited almost the whole of the Bill of Rights.—Such was the bill of wrongs and insults—he would not profane it by a comment.

Page 56. "The attention of the government of England (for I rather choose to call it by this name, than the English government) appears, since its political connection with Germany, to have been so completely engrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purposes. Domestic concerns are neglected; and, with respect to regular law, there is scarcely such a thing."

Here was a reflection of the most wicked sort on the government of this country, and an invitation to the people to rebel, by telling them there was scarcely such a thing as law in England.

Page 63. "With respect to the two Houses, of which the English Parliament is composed, they appear to be effectually influenced into one, and, as a legislature, to have no temper of its own. The Minister, whoever he at any time may be, touches it as with an opium wand, and it sleeps obedience."

"But if we look at the distinct abilities of the two Houses, the difference will appear so great, as to shew the inconsistency of placing power where there can be no certainty of the judgment to use it. Wretched as the state of representation is in England, it is manhood compared with what is called the House of Lords; and so little is this nick-named house regarded, that the people scarcely inquire at any time what it is doing. It appears also to be most under influence, and the furthest removed from the general interest of the nation."

There was no occasion to defend the House, it always had and has at this moment some of the most illustrious men in Europe.

Pages 107 and 108. "Having thus glanced at some of the defects of

of the two Houses of Parliament, I proceed to what is called the Crown, upon which I shall be very concise.

"It signifies a nominal office of a million sterling a year, the business of which consists in receiving the money. Whether the person be wise or foolish, sane or insane, a native or a foreigner, matters not. Every ministry acts upon the same idea that Mr. Burke writes, namely, that the people must be hood-winked, and held in superstitious ignorance by some bug-bear or other; and what is called the Crown answers this purpose, and therefore it answers all the purposes to be expected from it. This more than can be said of the other two branches.

"The hazard to which this office is exposed in all its countries, is not from any thing that can happen to the nation—the danger of coming to its senses."

So that if the people of this country come into their senses, we shall have no Crown.—We had been out of our senses for centuries, if this was the case; and all he could wish was that we might remain lunatics for ever.

Page 116 and 217. "I happened to be in England at the celebration of the centenary of the Revolution of 1688. The character of William and Mary always appeared to me detestable; the one seeking to destroy his uncle, and the other her father, to get possession of power themselves; yet, as the nation was disposed to think something of that event, I felt hurt at seeing it ascribe the whole reputation of it to a man who had undertaken it as a job, and who, besides what he otherwise got, charged six hundred thousand pounds for the expence of the little fleet that brought him from Holland. George the first acted the same close-fisted part as William had done, and bought the duchy of Bremen with the money he got from England, two hundred and fifty thousand pounds over and above his pay of King; and having thus purchased it at the expence of England, added it to his Hanoverian dominions for his own private profit. In fact, every nation that does not govern itself, is governed as a job. England has been the prey of jobs ever since the Revolution.

The Attorney General made a few observations upon these slanders on William and Mary, and the whole of the House of Hanover.

"The fraud, hypocrisy, and imposition of governments, are now beginning to be too well understood to promise them any long career. The farce of monarchy and aristocracy, in all countries, is following that of chivalry; and Mr. Burke is dressing for the funeral. Let it then pass quietly to the tomb of all other follies, and the mourners be comforted.

"The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick for men, at the expence of a million a year, who understood neither her laws, her language, nor her interest, and whose capacities would scarcely have fitted them for the office of a parish constable. If government could be trusted to such hands, it must be some easy and simple thing indeed, and materials fit for all the purposes may be found in every town and village in England."

Here the Attorney General made several observations upon the advantage

vantages of an hereditary over an elective Monarchy, and paid a very handsome compliment to the King of Poland. He then called the attention of the Jury to arguments that had been urged against Mr. Paine's Rights of Man, by an American gentleman of the name of Adams; he read several extracts out of this book, and said, these arguments seemed to him to be complete answers to the Rights of Man. He then proceeded to state what sort of evidence he had to prove that Mr. Paine was the author of the work in question, and in what temper of mind it was that he wrote it.

Thomas Haynes was the first witness called on the part of the prosecution; who said he had bought the Second Part of the Rights of Man on the 20th of February last, at the shop of Mr. Jordan, No. 166, Fleet Street.

Thomas Chapman said he was a printer, and knew the defendant Thomas Paine. He was introduced to Mr. Paine by Mr. Thomas Christie. He was introduced as a printer to print some books. In the year 1791, he printed the First Part of the Rights of Man; he also printed part of the Second Part of the Rights of Man, to wit, to page 112, to signature H. He had the manuscript in his possession to p. 146, and had composed as far as 140. But when sheet I came into his hands, upon examining it, part of it appeared to have a dangerous tendency. He then determined in his own mind not to proceed with the work. He wrote a short note to Mr. Paine for that purpose, and it was with a degree of reluctance that he did it, owing to the civilities he had received from Mr. Paine. An accident, however, occurred, which made this business easy. About the 16th of January, Mr. Paine called on him, and was rather intoxicated with liquor. He had been dining at Mr. Johnson's, in St. Paul's Church-yard. Mr. Paine introduced a subject upon which they had often differed—that of religion, which was a favorite topic when he was intoxicated. The subject of debate running very high, Mr. Paine at last came to personal abuse. An observation was made by Mrs. Chapman, at which Mr. Paine was greatly offended, and said he had not been so much affronted in the whole course of his life. He rose in a great passion, declaring that as the witness was a dissenter, he had a bad opinion of him, as they were a set of hypocrites. Mr. Paine told the witness he wished to settle with him. He called on the witness the next morning, and made many apologies for what he had said; that it was the effect of liquor, and wished him to go on with the work. But the witness would not, as he thought a part of it had an evil tendency. He made three separate proposals to Mr. Paine during the publication of this work; first, he offered him 100 guineas for the copy; secondly, he offered him 500l. and, thirdly, he offered him 1000 guineas. He answered, as he intended to publish a small edition of the work, that he wished to reserve it in his own hands.

The witness said he had seen Paine write, and thought he should know his hand-writing. He looked at several letters signed Thomas Paine, and believed they were the hand-writing of the defendant. One of these letters empowered Mr. Jordan of Fleet-street, who was the publisher of this work, to declare that if any person enquired who

was the author of the work, to say, that he, Paine, was the author. Others of these letters were orders to Mr. Chapman to deliver copies of the Rights of Man to Mr. Jordan.

John Perdue said, he was formerly acquainted with Mr. Paine when he was in the Excise, and before he went to America. A letter was shewn him, which Paine wrote to Archibald M'Donald, Esq. his Majesty's Attorney General. The witness said, he believed it was the hand-writing of Mr. Paine. This letter was dated Paris, Nov. 11th, first year of the Republic. There were passages in this letter, reflecting on the Royal Family of England.

Mr. Erskine objected to this letter being read in evidence, as it was not relevant to the subject of the present trial. My Lord, said he, the Attorney General states, that it contains a Libel of the most atrocious kind against his Majesty, and his illustrious progeny; if so, let him be prosecuted by another information.

It cannot prove any thing contained in the Second Part of the Rights of Man, nor will it be evidence, whether any thing therein contained be libellous or not. The present information charges nothing respecting this letter, and Mr. Attorney General may as well read any other work of Mr. Paine as this pretended letter.

Lord Kenyon said, he felt the force of Mr. Erskine's objection in the light which he put it, and he should certainly reject the letter, if the Attorney General had attempted to introduce it, either as a matter of aggravation or inducement to the Jury to find the Defendant guilty on the present charge. But the letter contained an avowal, that Mr. Paine was the Author of the book which is the subject of this Trial; and as the Attorney General offered it only to prove this fact, he could not resist its being read.

The Attorney General then stated the substance of the letter; which was, that he wrote to the Attorney General as a friend; that he had nothing to do with the trial himself. Whatever was the event, it could affect him in no other way than the increase of his reputation; that it was not his trial, but a trial of the English Government with the people of England; that getting a verdict against him, (which however would be difficult, except by a packed Jury) was the same as a verdict against the man in the moon; that had he time when he was in England, he would have published the information, with remarks upon it, but that now he would wait until the trial was over, and then he should have some observations. It stated, that it was possible for him to believe that Mr. Guelph, or any of his profligate sons, had not capacity to govern a nation. In stating this part, the Attorney General felt great emotion; he made several suitable comments on it. The letter then went on, stating several other particulars, together with a request that it might be read by the Attorney General to the Jury at the trial.

Several other letters were produced, all of which were proved to be the hand-writing of Mr. Paine. In short, there was no occasion for all these proofs, as nothing was denied upon the facts on the part of Mr. Paine by his council, except the letter to the Attorney General.

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The Prosecution being closed, MR. ERSKINE addressed the Court as follows :

Gentlemen of the Jury,

In that part of the Attorney General's address, in which he commented on the subject of a letter, stated to have been received from France, he did not appear to me to play the actor, when he exhibited signs of emotion, proceeding from feelings that did honour to his nature—from feelings which, animated by his duty, must make him eager to express his abhorrence of the direct and scandalous attack upon the honour of his Royal Master, and upon the character of his family. If his embarrassment was so great, and if his feelings were so deeply wounded, he will do me the justice, that mine must be equally, if not more deeply affected. In the high office which he holds, he must feel the strongest sense of duty in correcting every imputation that may be thrown on the august Personage whom he serves; but that high Personage is too far removed, too elevated above society, for the learned Gentleman to enter into those habits which beget the nicer sensibilities of the heart. I stand in the same situation with the Attorney General, in respect of another august and illustrious Person, implicated in the most improper manner in the forged letter which he has read; and, in addition to my official situation, he has had the condescension to admit me to the honour of his friendship, and therefore I owe him, I feel for him, all the duty of a grateful servant to an indulgent master; and all the affection which man can owe to man. What then must be my embarrassment this day, I must be without feelings and without affections, if I did not experience at this moment, the most afflicting emotions. But great though they are, they have not been able to detach me from the duty which I owe to my profession, to justice, to honour, and to my country. Gentlemen, it is the first and dearest benefit of an Englishman, that he is entitled to an impartial trial. The author of the Rights of Man would have had ample ground for detraction, if there appeared the smallest tincture of partiality in the proceedings of this Court. If the man whom he had chosen to defend him, had been intimidated by threats—had been reduced by prejudice---had been prevailed upon in any way to abandon the cause, he might have had occasion to complain. It would, indeed, be a blur and a blot on our Constitution, if a man could say that the slightest impediment was thrown in the way of justice. I lament, therefore, that the Attorney-General thought it necessary to read that forged letter. If he knew it to be genuine and authentic, it was his duty to make it the subject of a distinct prosecution. It has nothing to do with the present trial. I feel the impression it has made on your minds. I feel the impression it has made on my own. But I stand here as the advocate of Thomas Paine for the book that is the subject of the information, and knowing how essential it is to the character of British justice that the Bar should be free, I will still maintain what I conceive to be my professional duty as far as nature can struggle. That forged letter was admitted only under the pretext of its serving to de-

cypher the *quo animo* of the Author in writing the book. Granting even that it be a genuine letter, which I expressly deny, it has not the smallest tendency to establish that fact. It was written months after the publication: nay, after the Author had withdrawn from his country; after a time when, from the treatment he received at Dover, he might consider himself as one expelled from his country. Granting, therefore, that the letter were genuine, it is immaterial; it is foreign to the present trial; and the Attorney-General has utterly failed in that which I contend to be essential to a prosecution, in producing evidence of the evil mind with which the Author wrote his book. No one fact, previous to the publication, has he stated. Nothing to delineate the malignity, the wicked design, the seditious spirit with which the Author propagated his doctrines; nothing has he brought forward but this forged letter written so many months after, and in such circumstances.

The Attorney-General has said, that a rumour has gone abroad that the present prosecution has been carried on without his approbation, and he has thought it necessary to do away this impression by stating his direct concurrence. No one can be more ready than myself to do liberal justice to the candour, impartiality, and fairness of the learned Gentleman. I have no doubt of the integrity with which he has brought even the present action; but if he felt himself a little embarrassed by these rumours, which at best must have been heard only in a narrow circle, what must be my situation this day? standing up as I do against prejudices that have been openly, widely, generally circulated—Against imputations of the grossest and the most affecting kind—Gentlemen, you cannot be ignorant of the disgraceful means that have been taken, not merely to inflame the public mind against the Defendant, but to stamp and brand every man with the mark and reproach of disaffection to the Government and Constitution, who shall venture to hazard the slightest approbation of his doctrines. Can you go into any places, of public resort, either for pleasure or business, without hearing the cry against this man—without hearing every description of persons who may be inclined to wish for the reform of certain abuses in the administration of Government, confounded into one band of desperate destroyers of the Constitution? Can you go into any of these places without seeing the newspapers filled with the most direct attacks upon my character, for having undertaken his defence, as if it were not the bounden duty of a professional man to exercise his faculties in the cause of justice, impartially? Without making myself a party, to the cause of my client, I hold myself bound to stand up in his defence, and to take care that whatever be the offence alledged against him, he shall have all the benefits to be derived from the law, and from the pure administration of it. I say, Gentlemen, that the Constitution would be gone indeed, if the feelings, the foibles, the virtues, the caprices of Barristers were to be indulged, in the causes in which they take a part.—What would be the consequence of giving them an election? What would be the consequence if it were to be permitted to a man high in his profession to exercise his discretion in stating what causes he would appear in, and in what not? Would it

not

not be giving a previous judgment in the case? Would it not be arrogating to himself the province of the Judge, and giving a colour and prejudice to the case? I am sure the Noble Lord will tell you, that it is inconsistent with the pure administration of justice, that personal feelings should be permitted to weigh against public duty. I do not affect to hold myself out as a person so high in the profession as that weight should be given to the authority of my example; but yet from my station at this Bar, I may say, without the imputation of vanity, that it would be a flagrant breach of the integrity of the practice, detrimental and injurious to the character of the Bar, if I could be induced by any considerations to forego the defence of a client. I have, therefore, Gentlemen, treated with the contempt that they merited, all the sarcasms, all the calumnies, with which the conversation of companies, and the columns of newspapers, have been loaded. Regardless of all that folly, and of all that malice, can utter, I shall maintain until I die, the equal right of every man of this kingdom to a fair trial; and on this ground I stand up to defend this book, and this author, as by the law of England he, and it, can be defended. It is my duty, Gentlemen, to state the Question of this day. The Question is not whether the English Constitution be preferable to that of America, or that of France, for the common sense of the most uninformed person must revolt at such an idea; for how can a Court, constituted by English Government and English law, give a decision against that which creates its authority and constitutes its jurisdiction. It is not, therefore, the question this day, to try whether the doctrines of this author are congenial with the Constitution of England; nor whether they are doctrines opposite to, and in hostility with, the Constitution of England; but whether the book has been written and published agreeable to, and in conformity with, the law of the land.

I will make myself clearly understood—Suppose then that these doctrines of Thomas Paine were doctrines, Gentlemen, of which every one of you approved, and that I were now addressing myself to a Jury of Republicans, I say that you would not be authorized to give a verdict for the Defendant, if it should be made manifest to you, by the evidence, that he wrote these doctrines, and published them for the malignant purpose of promoting an insurrection in the country, thereby offending against the laws of the land; you have no jurisdiction and authority but from law; you have no right to give a verdict in favour of a man offending against the law, because you may happen to entertain opinions of the same kind which produced this breach of the law. This the Noble Lord will tell you from the Bench, and it is material for you to reflect upon this clear description of your duty; for it matters not how perfectly consistent with your opinions the doctrines might be; if they are contrary to the spirit and letter of the law, you must condemn. Were I therefore, as I say, addressing a body of men who lived upon this book, of whom it was the soul, who doated on it, as on an angel from heaven, I would say, Gentlemen, you cannot acquit this man if he has committed an offence against the law. It is not whether his opinion be your's: you are not to try his opinions, for the law has nothing to do with opinions; the law binds only conduct, it

leaves opinion open. You must see, therefore, what his conduct has been, and suffer not the congeniality of your opinions to blind and influence your judgment. This may be considered as a large concession, by some, as an artful manœuvre by others; but I assert, that it is a clear distinct description of the office of the Jury; for, on the other hand, if you shall disapprove of the doctrines of Thomas Paine, if you shall think that the Government of England has not the infirmities he imputes to it, nay, that the passages of the book related by the Attorney General tend to injure that Constitution, and to alienate the minds of the people of this country from the love of it; I say, that you cannot convict this man, unless you shall be convinced that he has overstepped the Freedom of the Press; for, Gentlemen, you must look at the mind, you must enquire whether he has written this book with an honest intention, from the genuine sentiments of his heart, and from a pure conviction that he was thereby promoting discussions for the benefit of his fellow citizens; and this is to be collected from the matter on the record. If a man is to be judged on extrinsic matter, that matter must be brought into connection, and put upon the record, that the Jury may be able to judge of it, and that the Defendant may have all the benefits of the law. What crime then is charged upon this man?—That he has written and published this book, and that this book is hostile to the Constitution of England:—No. The law of England knows no such crime. It must be proved, in order to constitute his guilt, not whether the Attorney General approves the book—not whether you approve the book—but whether Paine did not sit down and write a book against a Constitution which he admired and loved, with the diabolical intention of provoking discord and sedition in the country. If this were proved, Thomas Paine could not be defended; but if he thinks, what I and you do not think, that the Constitution of England is not the best calculated to promote the happiness of the people of this country, he is not guilty of any offence against the law, though his opinions may be inconsistent with the principles of the Constitution. Every man is protected in his opinions, it is only his conduct that makes guilt.

I hold it, Gentlemen, to be the duty of an advocate, if he should happen to have sentiments different from his client, that he is bound to conceal them. I hold him equally bound to disclose his opinions, if they should happen to be favourable to him; for he is bound to exert his whole faculties in support of his client. I am sure that it will be of little weight, what may be my opinions upon those doctrines; but I am ready to give my client all the benefit that he can derive from the declaration of my sentiments. I profess myself then to love the genuine principles of the British Constitution; and I solemnly believe, that the Constitution, as administered by King, Lords, and Commons, is the best calculated to secure the happiness of the people of this country, of any frame of Government, ever conceived by man. I think it necessary thus to preface my particular opinions, that you, Gentlemen, may see that they come from no suspected quarter; that we are in unison with each other; and that in striving to ascertain the truth, and to secure the happiness of this country, we are animated by a common principle.

iple. I proceed, therefore, to say, and this proposition I pledge myself to maintain, from the very nature of civil society and Government, as well as from the theory and practice of the English law, that unless it can be proved, which I contend it has not been, that he has endeavoured to excite individuals to rebellion against the national will, from an evil mind, you cannot convict him of a libel on the record. Though you and I may think differently, that is no object; there would be an end of the liberty of Englishmen if they could not write and speculate freely upon the principles of Government. The Freedom of the Press of England, Gentlemen, consists in this, that a man must not address to individuals, upon the spur of some occasion, opinions that shall provoke them to sedition, to insurrection, and tumult; but he may freely address to the universal reason of a whole nation, principles of Government, congenial with, or hostile to, the form of Government under which he lives. He may canvas the forms of Government in general, or he may discuss those of his own in particular; he may take them to pieces, he may scrutinize them with the greatest rigour—he may state what he thinks to be wrong in the original conception; he may trace the gradual progress of decay, or of corruption; he may point out the consequences; he may dwell on the enormity; he may warn the people of their fate; and, in all this, he is not the subject of a criminal prosecution. He is not criminal, unless he did it, not contemplating the hope of meliorating the condition of the people, but feasting on the misery, with the prospect of which he indulged a diabolical nature. The Liberty of the Press consists in this, that any individual may teach his fellow-citizens doctrines in opposition to those under which they live; he may exercise his own faculties: he may provoke them to the exercise of theirs; he may persuade the whole people to agree with him in these doctrines, and he is not guilty; but if he shall teach it as a doctrine, that any individual may oppose the law of the land, may resist the legal authority, and may, by himself, or in conjunction with others, not merely disobey, but thwart and impede the settled order of society, he would be guilty of a libel upon the record. Shew me an expression like these in the books of Thomas Paine; shew me, from any part of the evidence of the Attorney General has brought forward, any thing to prove the evil mind of the author. The Attorney General has brought forward a set of passages, but he knows that passages are not to be taken without the context. You must discover the mind of Thomas Paine in his book, and as you must take his book out of Court with you it will be your duty to read it carefully. What, will you say, Gentlemen, when you find, in the very Preface to his book, the following sentiments? Every one knows, that the very end of a preface is to announce to the reader the intention and substance of the following tract; and here you will find, Gentlemen, in the very outset of this dangerous and diabolical performance, an antidote to the very poison which it is stated to disseminate.

“ If a law be bad, it is one thing to oppose the practice of it, but it is quite a different thing to expose its errors, to reason on its defects, and to shew cause why it should be repealed, or why another ought to be substituted in its place. I have always held it an opinion (making it also
my

my practice), that it is better to obey a bad law, making use, at the same time, of every argument to shew its errors, and procure its repeal, than forcibly to violate it; because the precedent of breaking a bad law might weaken the force, and lead to discretionary violations of those which are good *.

"It is for the good of Nations, and not for the emolument or aggrandizement of particular individuals, that Government ought to be established, and that mankind are at the expence of supporting it. The defects of every Government and Constitution, both as to principle and form, must, on a parity of reasoning, be as open to discussion as the defects of a law; and it is a duty which every man owes to society to point them out. When these defects, and the means of remedying them are generally seen by a Nation, that Nation will reform its Government, or its Constitution in the one case, as the Government repealed or reformed the law in the other. The operations of government are restricted to the making and administering of laws; but it is to a Nation that the right of forming or reforming, generating or re-generating Constitutions and governments belong; and consequently those subjects, as subjects of investigation, are always before a country as a matter of right, and cannot, without invading the general right of that country, be made subjects for prosecution."

These, Gentlemen, are the Rights of Man: for no man can, without rebellion, withdraw his obedience; nothing short of the will of the whole can alter the Constitution of a country, but every individual of that country may publish his opinions, may give his advice, and may endeavour to bring over other people to his sentiments. If a man taught that his fellow-citizens might act at their discretion, if he were to say that their natural rights freed them from all restraint, and that they were to form to themselves the rule of their own conduct, in direct opposition to the existing law, he could not be acquitted by a tribunal of English justice: but if a man teaches the wisdom of Revision and Reform, the duty of meliorating our condition to the uttermost, or even the advantages that would flow, in his opinion, from a complete alteration of the form of our Government, he acts upon the known, acknowledged, valuable privileges of an Englishman. Thanks be to God, and to the wisdom of our ancestors, such has ever been our advantageous Liberty, with some slight and melancholy interruption, which I shall bye and bye state to you. If no man could have gone before the day in which he lived, and pointed out, from the force of superior intellect, improvements in our social system, how could Government have passed on from stage to stage, from state to state, until at last it has acquired the beautiful shape and prosperous establishment, which the Attorney General thinks it would be profanation to touch, and to such a state of perfection as to make it a vain hope to look for any further melioration?

What is the fairest fruits of the English Tree of Liberty?—The security of our rights and of the law, and that no man shall be brought to

* The case is the same with respect to principles and forms of Government, or to what are called Constitutions, and the parts of which they are composed.

trial where there is prejudice existing against him. If any thing appears that can infect the minds of the Jury, the Court upon motion will postpone the trial. The Noble Lord will recollect, that upon this principle the trial of the Dean of St. Asaph was postponed; for it was stated in the Court, that a number of extracts from ancient books, asserting the rights of Jurors, had been circulated; and the Noble Lord put off the trial. If such was the case upon the mere circulation of a set of extracts from a set of writers of high authority, what must be the situation of my client?—This book, and this defendant, have been the subjects of every sort of imputation. Pending the trial, even a set of Associators, who know so little of the Constitution of England, as to interfere with the course of justice, circulate an answer to this very pamphlet. It is given away at turnpikes, thrown down our areas, thrust into every man's hand. The coffee-houses, the newspapers, are full of it—nay, that high tribunal, which is the guardian, and the representative of the popular branch of England, has been insulted with the anathemas against this man, and against this book. What is the result of all this?—That the cause is prejudged—that the mind of no man within the sweep of this torrent can be free; and that if I had made a motion in the Court, I am confident that the justice of the Noble Lord would have postponed the trial. What is the consequence of all this? You, Gentlemen, must guard your minds against the approach of this frenzy; that you must collect firmness with conscience, and elevate yourselves above the feebleness of human weakness.—You must discover his mind in his book, not in the rage, nor in the cant of the times. You must throw away every thing but the book—the forged letter that has been read to you, you must equally reject. I heard of this same forged letter, and I have reason to believe it to be a foul forgery, brought forward at this moment, not merely to embarrass me, but to embarrass you; but you must prove that you are not men whose understandings are to be tortured by such appeals. You will prove by your verdict, that you will deal by this man as you would wish to be dealt with in a similar situation. Remember this doctrine of Englishmen, that *opinion is free*. If I were to move an amendment in any part of the existing laws of the land, would it be right, would it be reasonable, that you should convict me of a libel, because you differed from me in opinion? It is the opinion of this author, that it is the duty of citizens to obey a law while it exists. “When a nation,” says he, “changes its opinions and habits of thinking, it is no longer to be governed as before; but it would not only be wrong, but bad policy to attempt by force, what ought to be accomplished by reason. Rebellion consists in forcibly opposing the general will of a nation, whether by a party or by individuals.” Such is the doctrine of Thomas Paine; and I assert this to be the true law of England; and I say, that I give the best proof of my attachment to the illustrious family upon the throne, when I maintain these doctrines: and when I assert, that they are the safest for their desirable interests, and for their honour. The Attorney General, in his observation upon the infamous aspersions on the Royal Family, speaks of the heir-apparent of the Crown from hope—I speak from knowledge. Without detaining you for one moment to animad-

vert on what I think, the indecency of the tameness with which imputations on the Royal progeny have been suffered of late, of the apparent disinclinations to prosecute what tends to break the best hopes of Englishmen, and wound the fondest feelings of the Royal bosom, while there is an eagerness to prosecute the discussion of popular opinions. I believe, and I know, that if ever there was a man more firmly attached than another to the pure principles of the British Constitution, to those rights of the people, the exercise of which seated the present Family upon the throne, it is the heir-apparent of the Crown of these realms. If there shall come a time that, by the course of nature, and God forbid that it should ever happen otherwise than by the course of nature, he should succeed to the throne of his ancestors, I have the firmest confidence that he will make the Constitution the rule of his conduct. I know that these sentiments are congenial to his breast. I had the honour, in my place in the House of Commons, when I believe that august person was present, to pronounce my opinion on political doctrines, and to put the title of the King's Majesty upon the right which the people have to chuse their Chief Magistrate—the only right upon which, in my opinion, the title can be truly safe.

In endeavouring to find the true spirit with which this book was written, you must go back to the train of circumstances, which have formed the habits and opinions of the author. You cannot have forgotten that calamitous æra in our history, to which no man can look back without horror,—the æra of the American war. This man performed a considerable part on that memorable theatre; and of his conduct there, Mr. Burke, that celebrated character, of whom I cannot speak otherwise than with great respect, however he may affect to treat me with contempt, has spoken of the conduct of Thomas Paine with high respect. Here Mr. Erskine read some quotations from his *Thoughts on the Causes of the present discontent*, and other works in commendation of Thomas Paine, and he said that these two persons used to be of the same mind, though they now differ. Paine might be right, but Mr. Burke could not be right, for Mr. Paine had been consistent with himself, but Mr. Burke had contradicted every former opinion. Paine seeing the consequences of the conduct of Britain with regard to America, had attacked the English Constitution, for Mr. Erskine said, he does attack the English Constitution—I do not affect to deny it. He speaks against the original frame of our Constitution, what I think is only applicable to its decay, and what, for I will not mince the matter, proceeds from corruptions which would bring on the ruin of us all, if I did not know and believe the Constitution contains the seeds of its own reform. Is it libellous in him, however, to say what he has said against the constituent branches of our Constitution?—the grandest authorities of England have done the same. Mr. Erskine quoted a passage of a letter of Sir George Saville to his constituents—[Vide Annual Register for 1780, p. 400.]—"I return to you," says Sir George, "baffled and dispirited, and, I am sorry that truth obliges me to add, with hardly a ray of hope, of seeing any change in the miserable course of public calamities." And of Sir George Saville, Mr. Erskine gave the admirable character as drawn by Mr. Burke. At this time Mr.
Paine

Paine and Mr. Burke fought in the same field—Mr. Burke spoke to Parliament, Mr. Paine to the People. Mr. Paine has only been a plagiarist from himself; he has been drawn on in the same train of thinking; and, therefore, I assert that his book is the product of his real sentiments, the genuine efforts of a mind struggling for what he conceives to be the interests of Humanity. The cause is potent, it produced the revolution in America, it produced the revolution in France; where a Government, incurable from its corruption, and profligacy, was totally overthrown; but can the same doctrines effect the constitution of England? No. His doctrines had no effect, nor could there have occurred a period when the public mind could have been excited by any such doctrines, if it had not been previously provoked by the inflammatory, the ill-judged, and the exasperating doctrines of Mr. Burke. He it was who led the van in all this war of sedition.—Let us go back for a moment to this origin. When the people of this country saw this despicable government of France demolished—that government which had been the scourge of England—they rejoiced in the happiness of so many millions. A reverend divine, now no more, made it the subject of exhortation from the pulpit. A society of men met to celebrate it, and Mr. Burke was roused by this into the fever of opposition. Though he represented them as an insignificant body of obscure, individuals, he attacked the whole system of England with such bitterness of invective, and attacked the most established doctrines, with such vehemence of dissent, that from that day to this the flame of contention has not ceased to rage.—What was the principle of this work?—That the people of England had no right, no power, to change a tittle of their Constitution; that it was an indissoluble compact, which at no time, on no ground, for no reason, could be broken: so that neither reason nor revelation, however they might point out to the people of England a better form of government, wiser institutes of peace, stronger bases of liberty, they durst not strive to attain them. If it be so, for God's sake, let policy and discretion strive to conceal the afflicting truth, for it will surely lead to the convulsion which he affects to deprecate. Rather put Paine into the hands of every man, make the lowest ignorance acquainted with his doctrines, and chase away, if it be possible, the impressions which Mr. Burke has made. How different is the doctrine of truth and of peace!—How different is the doctrine of the Revolution! Look at the Constitution, say the friends of liberty, it is your own treasure. Will you keep it as it is, or will you change it at the suggestion of every theorist? Your own happiness is at stake; but remember the happiness that it has produced you. Will they not be likely to touch with awe a Constitution which comes thus recommended to them by parental tenderness? and will they not protect it with parental authority?—Look now at the address of Mr. Burke. Here is your Constitution, which we have made for you, and for your posterity for ever. We buckle it on your backs, for you are beasts of burden. You must not dare to touch it—you have entered into a compact which is indissoluble. Are such doctrines the legitimate way of endearing the Constitution of the people? And I mention all this in order to shew you what the book of Mr. Paine is; for Paine's book is an answer to

to those doctrines of Mr. Burke—doctrines more injurious than any that could be asserted by Republicans and Levellers !

Mr. Erskine then cited several of our most eminent English writers, whose sentiments are congenial with those of Mr. Paine on the subject of Government.—He first quoted Mr. Paley on the Principles of Moral and Political Philosophy, p. 426.

V. " No usage, law, or authority whatever is so binding, that it need or ought to be continued, when it may be changed with advantage to the community. The family of the Prince, the order of succession, the prerogative of the crown, the form and parts of the legislature, together with the respective powers, office, duration, and mutual dependency of the several parts, are all only so many laws, mutable like other laws, whenever expediency requires, either by the ordinary act of the Legislature, or, if the occasion deserve it, by the interposition of the People. These points are wont to be approached with a kind of awe ; they are represented to the mind as principles of the Constitution settled by our ancestors, and, being settled, to be no more committed to innovation or debate ; as foundations never to be stirred ; as the terms and conditions of the social compact, to which every citizen of the state has engaged his fidelity, by virtue of a promise, which he cannot now recall. Such reasons have no place in our system ? to us, if there be any good reason for treating these with more deference and respect than other laws ; it is either the advantage of the present Constitution of government (which reason must be of different force in different countries), or because in all countries, it is of importance, that the form and usage of governing be acknowledged and understood, as well by the governors as the governed, and because the seldomer it is changed, the more it will be respected by both sides."

Mr. Erskine then introduced Hume's History of England, vol. ii. p. 88.

" It must be confessed that the former articles of the Great Charter contain such mitigations and explanations of the feudal law as are reasonable and equitable ; and that the latter involve all the chief outlines of a loyal government, and provide for the equal distribution of justice, and free enjoyment of property ; the great object for which political society was at first founded by men, which the people have a perpetual and unalienable right to recall, and which no time, nor precedent, nor statute, nor positive institution, ought to deter them from keeping ever uppermost in their thoughts and attention."

The next writer was the immortal Locke, and he cited the following passages from his Treatise on Civil Government, p. 268, 270, 309, 313.

" All men, say they, are born under government, and therefore they cannot be at liberty to begin a new one. Every one is born a subject to his father, or his prince, and is therefore under the perpetual tie of subjection and allegiance. It is plain mankind never owned nor considered any such natural subjection they were born in, to one or to the other, that tied them, without their own consents, to a subjection to them and their heirs."

" Those who would persuade us, that by being born under any government

ment we are naturally subjects to it, and have no more any title or pretence to the freedom of the state of Nature, have no other reason (bating that of paternal power, which we have already answered) to produce for it, but only because our fathers or progenitors passed away their natural liberty, and thereby bound up themselves and their posterity to a perpetual subjection to the government, which they themselves submitted to. It is true, that whatever engagements or promises any one has made for himself, he is under the obligation of them, but cannot, by any compact whatsoever, bind his children or posterity; for his son, when a man, being altogether as free as the father, any act of the father can no more give away the liberty of the son, than it can of any body else."

"And therefore they have a very wrong notion of government who say, that the people have encroached upon the prerogative, when they have got any part of it to be defined by positive laws; for in so doing, they have not pulled from the prince any thing that of right belonged to him, but only declared that that power which they indefinitely left in his or his ancestor's hands to be exercised for their good; was not a thing which they intended him when he used it otherwise; for the end of government being the good of the Community, whatsoever alterations are made in it, tending to that end, cannot be an encroachment upon any body, since nobody in government can have a right tending to any other end; and those only are encroachments which prejudice or hinder the public good. Those who say otherwise, speak as if the prince had a distinct and separate interest from the good of the Community, and was not made for it; the root and source from which spring almost all those evils and disorders which happen in kingly governments. And indeed, if that be so, the people under his government are not a society of rational creatures, entered into a community for their mutual good, they are not such as have set rulers over themselves, to guard and promote that good; but are to be looked on as an herd of inferior creatures, under the dominion of a master, who keeps them and works them for his own pleasure or profit. If men were so void of reason, and brutish, as to enter into society upon such terms, Prerogative might indeed be, what some men would have it, an arbitrary power to do things hurtful to the people.

"And, therefore, though the People cannot be judge, so as to have, by the constitution of that society, any superior power, to determine and give effective sentence in the case; yet, they have, by a law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves which belongs to all mankind; God and Nature never allowing a man so to abandon himself, as to neglect his own preservation; and since he cannot take away his own life, neither can he give another power to take it. Nor let any one think this lays a perpetual foundation for disorder; for this operates not till the inconvenience is so great, that the majority feel it, and are weary of it, and find a necessity to have it amended. But this the executive power, or wise princes, never need come in the danger of; and it is the thing, of all others, they have most need to avoid, as of all others the most perilous."

Mr. Burkes's Letter to the Sheriffs of Bristol, was then introduced; and Mr. Erskine read the following passages from p. 55. 57. 58.

" If there be one fact in the world perfectly clear, it is this, ' That the disposition of the people of America is wholly averse to any other than a free government ;' and this is indication enough to any honest Statesman, how he ought to adapt whatever power he finds in his hands to their case. If any ask me what a free government is, I answer, that, for any practical purpose it is what the people think so; and that they and not I, are the natural, lawful, and competent judges of this matter. If they practically allow me a greater degree of authority over them, than is consistent with any correct ideas of perfect freedom, I ought to thank them for so great a trust, and not to endeavour to prove from thence, that they have reasoned amiss, and that having gone so far, by analogy, they must hereafter have no enjoyment but my pleasure.

" Civil Freedom, gentlemen, is not, as many have endeavoured to persuade you, a thing that lies hid in the depth of abstruse science. But is a blessing and a benefit, not an abstract speculation; and all the just reasoning that can be upon it, is of so coarse a texture, as perfectly to suit the ordinary capacities of those who are to enjoy and to defend it.

" For Liberty is a good to be improved, and not an evil to be lessened. It is not only a private blessing of the first order, but the vital spring and energy of the state itself, which has just so much life and vigour as there is liberty in it. But whether liberty be advantageous or not, (for I know it is a fashion to decry the very principle) none will dispute that peace is a blessing; and peace must, in the course of human affairs, be frequently bought by some indulgence and toleration at least of liberty. For as the Sabbath (though of divine institution) was made for man, not man for the Sabbath, Government, which can claim no higher origin or authority, in its exercise at least, ought to conform to the exigencies of the times, and the temper and character of the people with whom it is concerned, and not always to attempt, violently, to bend the people to their theories of Subjection. The bulk of Mankind, on their part, are not excessively curious concerning any theories, while they are really happy; and one sure symptom of an ill-conducted State, is the propensity of the people to resort to them."

Do not let us be rash, gentlemen, in deciding upon this great question. Before we condemn this author by bell, book, and candle, let us reflect a little on the progress of the principles of freedom. It is but one year ago, that I could have an opportunity of addressing to you such an argument. Gentlemen, your authority to judge of a Libel is but a year old. It is but seven or eight years ago when I stood upon a question like the present, upon very different grounds, when I had less to support me against the embarrassments with which I was surrounded in the presence of an enlightened profession, and holding a doctrine that was scouted. The Earl of Mansfield, who, though he could not treat me with unkindness, for it was not in his nature, laughed at me as you laugh at the prattle of a child; and I was desired to go to School with my new-fangled doctrines, to learn the law of the land. Here is an argument against rashness. I have lived to see the Parliament of England unanimously declare that I was in the right. Knowing then that it has been by slow and gradual degrees, that the constitution of England has grown to what it is, for God's sake let us be careful

careful not to stifle the voice of reason by a rash and hasty decision.

If Mr. Burke's doctrine be right, no opinions upon government can be published, for the people have no jurisdiction. If the people have not the power to alter and amend, advice is not merely impertinent, it is dangerous. A jurisdiction to be competent must have power; and when, therefore, he asserts that the people of this country are utterly, and for ever, deprived of the power of changing their Constitution, he pronounces a prohibition upon all reasoning, upon all opinion, upon all discussion. What has been the course of man? That he has been led by awful authorities, step by step, from his savage state in the woods, to our present blessed condition of light, of knowledge, and of enjoyments. We should still be savages, we should yet be in the woods, if this prohibition had existed; and to what must we return, if every man is to be condemned, who shall now promulgate the opinions that he entertains upon the nature of government?

Of all the attainments of a people, the Liberty of the Press has been uniformly the last—Uniformly despotism has resisted the propagation of truth. All other concessions power has been willing to make, but against the truths of reason—against the light of knowledge, it has maintained an eternal war. Let us recollect the course of the world; the universal God of Nature, the Saviour of Mankind, the Fountain of all Light, who came to save Man from eternal darkness, expired on a cross, the object of Infidel scorn—of impious incredulity, because they rashly opposed the meek and mild propagation of the truths that were to point to peace and happiness in the world. His blessed followers fell victims to the same horrid spirit. The Saviour might have come invested with eternal power, and compelled the instantaneous acceptance of his doctrines; but he came to confound the pride of worldly power. He came clothed in meekness, in benevolence, in humility, and he preached his consolations to the poor. In this way did political power continue to exercise its tyranny, until religion had arisen to such a standard, as to make it formidable; and then political power took ecclesiastical power into partnership, when they exerted their combined efforts at once against the reason, and the conscience of man. Thus, upon the revival of letters was superstition made the instrument of political tyranny; but at length the inquisitive spirit of Englishmen burst the chains, and the Liberty of the Press had its beginning. It was free until, (in 1637), the Star Chamber was erected;—mark the consequence; the people suffered under restraint indeed, but in eleven years Charles I. perished on a scaffold. Gentlemen, the human mind cannot live under restraint. Let men communicate their thoughts with freedom, and their indignation fly off like a fire spread on the surface; like gunpowder scattered, they kindle, they communicate; but the explosion is neither loud nor dangerous:—keep them under restraint, it is a subterraneous fire, whose agitation is unseen until it bursts into an earthquake or volcano. Such was the whole effect of the restraints in England. Cromwell suffered almost all his misfortunes from this cause, and the vigour of his government could not save it against the consequences of his attack on the liberty of the press. The restraint continued under Charles II. and the
emotions

emotions that it produced, happily for England and for man, ended in the revolution. All the licences were done away, the press was made free, and the Constitution has already endured a century. Thus, gentlemen, our government has been safe in proportion to the freedom of writing. Here Mr. Erskine produced some of the finest authorities of England; the glorious Milton led the van. His memorable passage, that in former times the issue of the brain was no more stifled than the issue of the womb, and his fine illustration of the consequences of suppressing truth, in the case of Galileo, were dexterously used by Mr. Erskine---He perished in a prison, because he ventured to think, from observing the phases of Venus, that the sun was that centre of our system, and yet, said he, we know that the sun is in that centre, and by our knowledge, we are enabled to push our navigation to the extreme limits of the world, and, by line and rule, to make our way through regions the most unknown.

He then cited the following passage from Milton's *Areopagatica*, p. 58.

"If it be desired to know the immediate cause of all this free writing, and free speaking, there cannot be assigned a truer than your own mild, and free, and humane government; it is the liberty, Lords and Commons, which your own valourous and happy counsels have purchased us; liberty which is the nurse of all great wits; this is that which hath rarified and enlightened our spirits like the influence of Heaven; this is that which hath enfranchised, enlarged, and lifted up our apprehensions degrees above themselves. Ye cannot make us now less capable, less knowing, less eagerly pursuing of the truth, unless ye first make yourselves, that made us so, less the lovers, less the founders of our true liberty. We can grow ignorant again, brutish, formal, and slavish, as ye found us; but you then must first become that which ye cannot be, oppressive, arbitrary, and tyrannous, as they were from whom ye have freed us. That our hearts are now more capacious, our thoughts now more erected to the search and expectation of the greatest and exactest things, is the issue of your own virtue propagated in us; ye cannot suppress that, unless ye reinforce an abrogated and merciless law, that fathers may dispatch at will their own children. And who shall then stick closest to ye, and excite others? Not he who takes up arms for coat and conduct, and his four nobles of *Danegelt*. Although I dispraise not the defence of just immunities, yet love my peace better, if that were all. Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.

"What would be best advised then, if it be found so hurtful and so unequal to suppress opinions for the newness or unsuitableness to a customary acceptance, will not be my task to say; I shall only repeat what I have learnt from the Lord Brook—he exhorts us to hear with patience and humility, those, however, they may be miscalled, that desire to live purely in such a use of God's Ordinances as the best guidance to their consciences gives them, and to tolerate them, though in some disconformity to ourselves. And now the time in special is by privilege to write and speak what may help to further the discussing of matters in agitation. The Temple of Janus, with his two controversial faces, might

might now not insignificantly be set open ; and although all the Winds of Doctrine were let loose to play upon the earth, so Truth be in the field, we do injurious by licencing and prohibiting to misdoubt her strength---let her and Falshood grapple ; who ever knew Truth put to the worse in a free and open encounter ? Her confuting is the best and surest suppressing---when a man hath been labouring the hardest labour in the deep mines of knowledge ; hath furnished out his findings in all their equipage ; drawn forth his reason as it were a battle ranged ; scattered and defeated all objections in his way ; calls out his adversary into the plain ; offers him all the advantages of wind and sea, if he please, that he may try the matter by dint of argument---for his opponents then to sculk, to lay ambushments, to keep a narrow bridge of licencing where the challenger should pass, though it be valour enough in soldiership, is but weakness and cowardness in the wars of truth, for who knows not that Truth, like the Almighty, is strong, she needs no policies nor stratagems" (he might have added prosecutions) "to make her victorious."

There is such a connection between licentiousness and liberty, that it is not easy to correct the one, without dangerously wounding the other ; it is extremely hard to distinguish the true limit between them : Like a changeable silk, we can easily see there are two different colours, but we cannot easily discover where the one ends, or where the other begins.

The Attorney General had given no principles to draw the line by which we were to know where the Liberty of the Press ended, and the licentiousness began. He applied Lord Loughborough's memorable observation of the application. "To your tents, O Israel" as a pregnant instance of what would be seditious. Earl Stanhope had, with great shrewdness, ridiculed this sort of Liberty of the Press, which was to be all on one side---a liberty to praise Ministers. This is a sort of liberty that even the Empress of Russia would give you, and it may be called the Russian Liberty of the Press. To make the work of the author appear seditious, the doctrine of Lord Loughborough must be proved. It must be shewn that his doctrine was coupled with circumstances, or with expressions, tending clearly to provoke tumult ; such as, "We shall see how this will work---this will bring on a new revolution---we shall have French insurrections." But, said Mr. Erskine, no such thing : if one such expression had been proved, I would have thrown up my brief---as they are not, I stand up to give him the benefits of a fair trial, and I am not to be slandered with the charge of disaffection for exercising my faculties in his defence. When my Lord and I were engaged together as counsel for Lord George Gordon, as well might we have been suspected of favouring tumult and disorder, as that I now should be of sedition and disaffection.

Mr. Erskine then cited a passage from Lord Stanhope's Rights of Juries Defended, as follows, page 142, 143, 144.

"The thing that is illegal, is the exciting any one to sedition, or to a breach of the Peace. The question, therefore, upon a Libel is, whether the Paper published did thus excite and was so intended. Consequently mere speculative writings on the Constitution are not Libels, however absurd they may be. Suppose, for instance, that a man were to write a

speculative work, to prove that a trial by a single Judge would be far preferable to the Trial by Jury; or that a Parliament, composed only of a King and House of Peers, would be beyond comparison better than a Legislature of King, Lords, and Commons. No man could possibly reprobate such a work more than I should: but if the work did not excite the people to sedition, such a *speculative Publication* could certainly never be deemed a *Libel*: for *absurdity* is no part of the definition of a *Libel*.

"If our *boasted* Liberty of the Press were to consist only in the Liberty to write in praise of the Constitution, *that* is a Liberty enjoyed under many an *arbitrary* government. I suppose it would not be deemed quite an *unpardonable* Offence even by the *Empress of Russia*, if any man were to take it into his head to write a panegyric upon the *Russian form of government*. Such a Liberty as *that* might therefore properly be termed the *Russian Liberty of the Press*. But, the *English Liberty of the Press*, is of a very different description: for, by the Law of England, it is *not* prohibited to publish *speculative Works* upon the Constitution, whether they contain Praise or Censure."

"The *Liberty of the Press* is of *inestimable* value, for, without it, this nation might soon be as thoroughly *enslaved* as France was, or as Turkey is. Every man who detests the *old* government of France, and the *present* government of Turkey, must be, therefore, earnest to secure that *Palladium* of Liberty; and must also be anxious to preserve to the people, inviolate, the *Trial by Jury*, that transcendent, that incomparable and *guardian* Right".

Mr. Erskine came now to examine the passages set forth in the Information. We have already gone at so much length into his general argument, as to be unable to follow him in the ingenuity of his observations on his Extract. As to the first, that all hereditary government was a tyranny, he desired the Jury to look at the context. I deny, says Paine, that hereditary Monarchy is the Constitution. He does not inherit us like flocks, for the people may confer it; they have conferred it. This is his argument. The second was an extraordinary selection—it would be no attack upon the Revolution, if it had been accomplished by demons. Do we love the Reformation less for being accomplished by one of the most profligate of our Kings? No matter that the Revolution was brought about by intrigue; that it was the work of a Coalition. It is not by whom, but what it is, that the People will enquire. He contended, that the people had, by the freedom of opinion, obtained every thing from Magna Charta downwards. The third quotation, that we had hardly any law in England; was no libel; for he did not arraign the administration of law, and many of our best writers had asserted, that there was much confusion, much difficulty, much to be mended in our jurisprudence. With regard to the passages on the two Houses of Parliament, it was strange, that Mr. Burke should accuse him; he who had so severely, so outrageously impeached both Houses in their turn; and here he quoted some of the memorable passages of Mr. Burke, of the Lords voting themselves useless, and of an addressing House of Commons, when there was a petitioning People. He quoted also the memorable Proclamation of Mr. Pitt and the Duke

of Richmond, from the Thatched House Tavern. On the celebrated passage of Mr. Burke, that Kings were naturally fond of low company, and that Lords were only low buffoons, he made a severe comment. It was a scandalous aspersions on the King, and on the Nobility; but these associators might write, though they would suffer no one to write but themselves, and yet foresooth these associators called themselves lawyers, though so ignorant of the character and delicacy of the law, as to propagate every species of prejudice against this man, and to create such a hue and cry against him, that if he had been stained with blood instead of ink—if he had been degraded by the crimes that make humanity abhorrent, ought not to have been raised against him in the moment of his trial—such a clamour, that even he was almost beat down and abashed by the roar. Even in the House of Parliament he was stigmatized by name, but he had delivered his opinion with the spirit and independence that became a professional man, determined not to shrink from his duty, whatever might be the hazard. These associators, had, with equal ignorance, said, that the great Harrington was as great a thief, and as obscure a ruffian, even as Paine.—Who was Harrington? It might have satisfied them to have read his pedigree;—He was descended from eight Dukes, three Marquisses, seventy Earls, twenty-seven Viscounts, and thirty-six Barons, of which number sixteen were Knights of the Garter. Will not this do, said Mr. Erskine, even for this time?—In a Court of Germany it would be decisive; but what was better than his descent was his conduct. He was the faithful servant of his master Charles; he was a man of such undoubted honour, that he avowed his Republican principles, yet retained the confidence and affection of his master. “I know not,” says Toland, “which most to commend---the King for trusting an honest man, though of Republican principles, or Harrington for owing his principles while he served a king.” How did he serve him? he staid in the Isle of Wight, to watch the fortune of his royal Master; he came up by stealth, concealed in the boot of a coach, to take his last farewell of him; he fell into his arms, and fainted at his feet on the scaffold. After Charles’s death, he wrote the famous Oceana, and in the work pays a tribute of truth to the virtues of his unfortunate Sovereign, and ascribes his misfortunes to the feeble nature of a Monarchy. Mr. Erskine stated the interesting anecdote, by which he recovered his Oceana from the gripe of Cromwell. He applied to his favourite daughter, and seeing her infant at her side, he snatched it up in his arms, and ran away; alarmed for its fate, the mother followed him---“I have seized your child,” said Harrington, “your father has seized mine---I restore to you your child---supplicate your father to restore my child.” The daughter supplicated, and Cromwell yielded. “If my government,” said Cromwell, “be made to stand, it will not be battered down by paper-shot.” After various other quotations from Montesquieu, Milton, and other classics, he made a warm and affecting conclusion. “Do not think that Englishmen are to be bent to your purpose by this froward course.”

" Be to their faults a little blind—
 " Be to their virtues very kind—
 " Let all their thoughts be unconfin'd
 " And clap your padlock on the mind."

Engage them by their affections, convince their reason, and they will be loyal from the only principle that can make loyalty sincere, vigorous, or rational, a conviction that it is their truest interest, and that their form of government is for their common good. Constraint is the natural parent of resistance, and this is no new doctrine. In all times where one side has been tyrannical, the other has been refractory. You must all remember, gentleman, Lucian's pleasant story—Jupiter and a countryman were walking together, conversing with great freedom and familiarity upon the subjects of heaven and earth. The countryman listened, with attention and acquiescence, while Jupiter strove only to convince him, but happening to hint a doubt, Jupiter turned hastily round, and threatened him with his thunder. "Ah! ah!" said the countryman, "now, Jupiter, I know that you are wrong; you're always wrong when you appeal to your thunder."

The Attorney General rose to reply; but Mr. Campbell, the foreman, said, he was instructed by his brother Jurors to say, that he might save himself the trouble of any observations, unless he thought otherwise himself, for that they were satisfied. The Attorney General sat down, and the Jury immediately gave a verdict of *Guilty*.

WHEN the trial was over the numerous attendants on the occasion surrounded Mr. Erskine, and having seated him in his carriage, accompanied by Mr. Pigott, took off the horses, and drew them amidst the acclamations of the people to Serjeant's Inn.



FINIS